

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Colorado Chemical Company Profit
Sharing Plan and Donald Kaufmann, TTEE

and

93-01373

Name of Respondents

Merrill Lynch, Pierce Fenner & Smith, Inc.
and Mark Jones

REPRESENTATION OF PARTIES

Colorado Chemical Company Profit Sharing Plan and Donald Kaufmann, TTEE ("Claimants") were represented by James A. Shpall, Esq. of Wolf & Slatkin, P.C., Denver, Colorado.

Merrill Lynch, Pierce Fenner & Smith, Inc. and Mark Jones ("Respondents") was represented by Jeffrey J. Scott, Esq. of Krys Boyle Golz Reich Freedman Bean & Scott, P.C., Denver, Colorado.

CASE INFORMATION

The Statement of Claim was filed on or about April 5, 1993. Submission Agreement of Claimant Colorado Chemical Company Profit Sharing Plan was signed on May 18, 1993 by Donald Kaufmann as trustee.

Statement of Answer was filed by Respondents Merrill Lynch, Pierce Fenner & Smith, Inc. and Mark Jones on or about July 9, 1993. Submission Agreement of Respondent Merrill Lynch, Pierce Fenner & Smith, Inc. was signed on June 30, 1993 by Thomas J. Klucsarits. Submission Agreement of Respondent Mark E. Jones was signed on June 30, 1993.

HEARING INFORMATION

The hearing was held on Thursday, December 9, 1993 in Denver, Colorado for two (2) sessions.

CASE SUMMARY

Claimant alleged that every investment except the Pilgrim Fund investment had been of a conservative nature designed to protect principal. It was also alleged that Donald Kaufmann on several occasions expressed the conservative investment objective to Respondents. Claimant further alleged that the investment in the Pilgrim Fund was made without its direction, consent, or authorization; was made contrary to the Claimant's express investment objectives and instructions; was made without providing Claimant with a prospectus; was inconsistent with the Respondent's obligation and promise to advise Claimant of appropriate investments; was inconsistent with Respondent's obligation to monitor investments and advise the Claimant of appropriate changes; and was oriented not toward meeting Claimant's investment objectives but instead toward generating fees for Respondents.

Respondents stated that all investment decisions in the account were made by Claimant, after being fully informed of the nature of the investments. Respondents specifically stated that Mark Jones fully discussed with Donald Kaufmann the Pilgrim Short Term Multi Market Fund. It was further stated that the decline of the net asset value was due to market conditions and not as a result of any action or inaction of Respondents.

RELIEF REQUESTED

Claimant requested an award of \$9,168.37, plus interest, reflecting the difference between the cost of Pilgrim Fund and the sale price.

Respondents requested that the Statement of Claim be dismissed and that they be awarded their costs of defense, including expert witness fees, filing fees and attorney's fees as provided by law.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

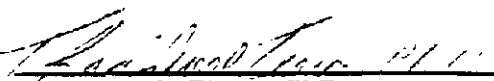
1. The claims asserted in this matter against Respondents Merrill Lynch, Pierce Fenner & Smith, Inc. and Mark Jones shall be and hereby are dismissed and denied in their entirety.
2. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Pursuant to §43(c) of the N.A.S.D. Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("N.A.S.D.") shall **retain** the non-refundable filing fee in the amount of \$75.00 and shall **retain** as forum fees the hearing session deposit in the amount of \$200.00 previously deposited with the N.A.S.D. by the Claimant. Respondent Merrill Lynch, Pierce Fenner & Smith, Inc. shall pay to the N.A.S.D. the sum of \$200.00 as additional forum fees.

Forum fees are calculated at the rate of \$200.00 per hearing session. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:



Thaddeus J. Tecza, PhD.
Public Arbitrator, Presiding Chair

